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Supreme Court, U. S.
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In the Supreme Court of the United States

October Term, 1978

MITCHELL J. WEINGER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

Petitioner Mitchell Weinger, prays that a Writ of Certiorari be issued to review the judgment of the Illinois Appellate Court for the First Judicial District entered in this cause on August 1, 1978.

OPINIONS BELOW

The opinion of the Illinois Appellate Court for the First Judicial District, as yet unreported, is reprinted as Appendix B, *infra*.

JURISDICTION

The opinion of the Illinois Appellate Court was entered on August 1, 1978. A timely Petition for Leave to Appeal to the Supreme Court of Illinois was filed by the Petitioner, but such Petition was denied on November 30, 1978. The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1257 (3); 62 Stat. 929.

QUESTIONS PRESENTED

1. May a court issue a search warrant upon an affidavit which relies upon a tip, purportedly based on personal observation of the crime in progress, when that tip is given several days after the fact by a person who had previously denied knowledge on at least two occasions and who was a participant in a joint criminal enterprise with one of the victims, when the informant's credibility and the reliability of his accusation are unsubstantiated except by corroboration of certain peripheral facts which do not bear directly upon the accusatory statement?

2. Should a warrant to search an arrestee's apartment be issued pursuant to an affidavit stating a police officer's belief that evidence of the crime for which the defendant was arrested are believed to be in that defendant's premises when the affidavit fails to assert any underlying circumstances in support of the affiant's belief?

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV, United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV, United States Constitution

Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Statement

On March 3, 1976, the stabbed bodies of Mark Demetrius and Marigray Jobes were found in Miss Jobes' apartment in Chicago, Illinois. Subsequently, based on conversations with Cedric Sbrena and on other matters asserted in a police report, police officer John Philbin applied for a search warrant of petitioner's apartment. (App. A, *infra*) Thereafter, petitioner was indicted by the Grand Jury of the Circuit Court of Cook County, Illinois, for the murders of Miss Jobes and Mark Demetrius.

Petitioner filed in the trial court a Motion to Suppress evidence obtained from his apartment in the execution of the search warrant. The trial court ruled, in part, that the Complaint for the warrant failed to recite facts supporting Sbrena's credibility. The trial judge also ruled that the Complaint failed to state facts showing that the items to be seized were located on the premises to be searched. (R. 84-90)

The trial judge's ruling was overturned by the Illinois Appellate Court, which relied on *Spinelli* v. *United States,* 393 U.S. 410 (1969), to form its contrary conclusions "that several factors were corroborated by police investigation from other sources which provided a substantial basis to credit Sbrena's claims concerning the events transpiring in the Jobes apartment"; and, "[i]t is a logical supposition that defendant would have these articles [for which the warrant issued] in his apartment." (App. B, *infra,* p. 10) A police report attached to the Complaint indicated that Jobes' brother was in the apartment on the evening of March 1st and heard Demetrius state that he and Sbrena were partners in a proposed plan to sell cocaine, that Sbrena was to arrive shortly to pick up the cocaine, and that Sbrena would be angry because approximately $600 worth of cocaine had been used, leaving only a small amount. (App. B, *infra,* p. 7)

Philbin also noted in his Complaint that "[c]onversations with other individuals, including Sbrena and * * * the victim's brother, disclosed that Jobes had a brown leather purse with a strap in her apartment on the day of the murder." The purse was not found in the apartment after the killings. (App. A, *infra,* p. 3; App. B, *infra,* p. 10)

Sbrena also gave an account of his alleged observations at the murder scene and a purportedly detailed description of the clothing allegedly worn by petitioner. These details were not relied upon by the Appellate Court, assumedly inasmuch as they were uncorroborated and could have been fabricated.

The opinion of the Appellate Court erroneously recites that there was "nothing in the matters presented to the judge, who issued the search warrant, which showed that Sbrena continued to assert * * * ignorance [of the killings] when confronted by the police." (App. B, *infra,* p. 9) To the contrary, Sbrena made prior inconsistent statements, the existence and significance of which were apparent to the trial judge and should have been apparent to the issuing magistrate and Appellate Court.

Sbrena very clearly asserted ignorance concerning what had happened to Demetrius and Jobes when he was first confronted by the police. The following brief chronology of events leading up to Sbrena's statement accusing Weinger points to this inescapable conclusion:

1. On March 3rd, prior to the discovery of Mark Demetrius' and Jobes' bodies, Demetrius' father called Sbrena and asked if Sbrena knew of Mark's whereabouts. Sbrena denied any knowledge; he said he tried to contact Mark on the evening of March 1st—the time when Sbrena eventually said the killings occurred—but he had been unable to do so. (R.C. 13)

2. Later on March 3rd, the police contacted Sbrena. What was said on this occasion is not spelled out in the affidavit or attached police report, but it is beyond question—in light of subsequent events that are re-

cited—that Sbrena continued to assert ignorance to the police on this occasion because:

(a) Following this contact and still on the 3rd, Sbrena called Mr. Demetrius and told him the police had contacted him and "had notified him" of Mark's death.

(b) Sbrena then repeated to Mr. Demetrius his prior story—that he had tried to contact and see Mark on the evening of March 1st, but that he had been unsuccessful in both efforts. Finally, as if to underscore his professed lack of knowledge, he asked Mr. Demetrius to relate to him the details of the killings.[1]

(R.C. 13)

Although the police officer's affidavit in application for the warrant does not date the conversation in which Sbrena eventually professed complete knowledge concerning the killings, plain common sense forces the conclusion that Sbrena would not have denied knowledge to Mr. Demetrius and asked him for details immediately after he gave his accusatory statement to the police. The only possible conclusion left is that the police went back to Sbrena, after he first denied knowledge to them and after

[1] It was Mr. Demetrius, in company with the building manager, who first discovered Mark's and Jobes' bodies. (R.C. 5) This discovery obviously occurred sometime between the first Demetrius/Sbrena conversation and the first police/Sbrena conversation on March 3rd. Because Mr. Demetrius had first-hand knowledge concerning the positions of the bodies and the condition of the room at the time of his second conversation with Sbrena, Sbrena's eventual recital to the police of even these details must be also suspect.

his second conversation with Mr. Demetrius, and somehow obtained the version reported in Officer Philbin's affidavit.[2] (App. A, *infra*)

[2] The affidavit, of course, does not reveal what tactics were employed to convince Sbrena to give this statement. Nor does it recite the underlying circumstances from which Philbin concluded that Sbrena "had knowledge" of the killings (R.C. 5), as distinguished from Sbrena's being implicated in them. Because Franks v. Delaware, ... U.S. ....., 57 L.Ed.2d 667 (1978), had not been decided at the time this matter was presented to the Appellate Court, and People v. Bak, 45 Ill.2d 140, and People v. Mitchell, 45 Ill.2d 148, precluded inquiry into the truthfulness of factual allegations in an affidavit for a warrant, no attempt was made in the trial court to determine whether Philbin, by this choice of phrasing, deliberately attempted to persuade the magistrate that another witness had somehow corroborated Sbrena's version that he was a mere witness.

REASONS FOR GRANTING THE WRIT

I.

The corroboration necessary to give credit to an informant or reliability to his information must refer to the accusatory portions of the information; the informant in this case was not shown to be creditable nor was his accusation shown to be reliable by such corroboration or by other satisfactory underlying circumstances.

The factors cited by the Appellate Court to sustain the warrant against the charge that Sbrena's reliability had not been established represent neither corroboration in the ordinary sense of the term, nor the type of corroboration sufficient, under *Aguilar's* test. "The vice of the police action lies not in the kind of information procured but in the unreliability of the source. The quantification of the information does not necessarily improve its quality; the information does not rise above its doubtful source because there is more of it." *Ovalle* v. *Superior Court,* 202 Cal. App.2d 760, 763, 21 Cal. Rpt. 385, 387 (1962).

In *Aguilar* v. *Texas,* 378 U.S. 108 (1964), this Court established that an affidavit for a search warrant reciting information from an informant may be sufficient to provide the basis for issuing a search warrant, if the affidavit sets forth the underlying circumstances with sufficient specificity to enable a judge to make an independent judgment concerning the validity of the information upon which the police have based their request; the affidavit must also present a statement or circumstances to indicate the credibility of the informant and the reliability of his information. In *Spinelli* v. *United States,* 393 U.S. 410 (1969), probable cause for the issuance of a search warrant hinged

upon an informant's tip of illegal activity but which failed to provide any basis to support the reliability of the informant or his conclusions that Spinelli was engaged in a criminal enterprise. This Court examined the information gathered by the affiant's own independent investigation and determined that there was insufficient corroboration of the informant's accusation to pass the *Aguilar* standards for finding probable cause. However, *Spinelli* has been widely relied upon as authority to examine surrounding factors which are purported to verify the report of an informant whose honesty and reliability are unsubstantiated. We ask the Court to grant review in this case to provide guidance to the judicial officer charged with determining probable cause in light of the disparate results in reviews of probable cause determinations rendered under the authority of the *Spinelli* decision.

We confess a total inability to understand just how Sbrena's revelations concerning his and Demetrius' narcotics activities, coupled with police discovery of less than the amount of cocaine claimed by Sbrena to be in the apartment, corroborates Sbrena's claim that the defendant killed Demetrius and Jobes. The police found only 2.6 grams of cocaine on Ms. Jobes' body. (R. C.5) Charles Jobes had already informed the police that Demetrius had admitted to him that about $600 of his and Sbrena's cache was gone. This revelation fails to depict Sbrena's credibility (see *People* v. *Scoma,* 71 Cal.2d 332, 335-6, 455 P.2d 419 (1969)), or the reliability of his information that defendant was involved in the killings.

Ms. Jobes' missing purse, and Charles Jobes' information that his sister had such a purse, and that Sbrena was expected at the Jobes apartment do, as the Court below has opined, suggest that Sbrena was present in the Jobes apartment on the evening in question, something Sbrena

twice, at least, denied. These factors do not, however, corroborate Sbrena's claim that Weinger was involved in the killings. They merely provide a potent motive for Sbrena to seek to shift the blame for the killings to someone else.

In particular, it is Sbrena's credibility with respect to his accusations against Weinger, or the reliability of his accusations against Weinger that needs a factual underpinning. His presence at the Jobes apartment, already averred by Charles Jobes and denied by Sbrena, is the very fact that raises a question as to his credibility and the reliability of his accusatory information. In this respect it is more important that Sbrena was involved in narcotics traffic with Demetrius than it is that he was named in the affidavit. *Cf. Spinelli* v. *United States,* 393 U.S. 410, 424 (1969) (White, J., concurring) ("Neither should the warrant issue if * * * his information comes from an informant, named or unnamed, since the honesty of the informant and the basis for his report are unknown.") See *People* v. *Scoma,* supra, 71 Cal.2d 332, 455 P.2d 419, 78 Cal. Rptr. 491, 495 n.6 ("* * * The question, whether or not the informant is named, is whether his information is reliable. (See *People* v. *Bates* (1958) 163 Cal.App.2d 847, 852, 330 P.2d 102.)" The informant, held to be unreliable in *Scoma,* was himself involved in narcotics traffic.)

"Corroboration," such as would warrant attributing credibility to an informant or reliability to his information, is not to be found in the confirmation of those collateral details that do not support the informant's accusation, but merely embellish upon portions of his story that are otherwise not in dispute. For example, the fact that an addict has supplied an officer with narcotics and other paraphernalia "gives no credence to his assertion that he obtained such narcotics from a named person * * * *" *People* v. *Scoma,* 71 Cal.2d 332, 339, 455 P.2d 419 (1969).

Corroboration as mandated by *Aguilar* means that "additional facts independently known or discovered by the police *supported the accusation* thereby imparting credit to the informant." *People* v. *Scoma,* 71 Cal.2d at 339-40 (emphasis added); see also, *People* v. *Smith,* 17 Cal.3d 845, 553 P.2d 557 (1976).

> "This Court has held that where the initial impetus for an arrest is an informer's tip, information gathered by the arresting officers can be used to sustain a finding of probable cause for an arrest that could not adequately be supported by the tip alone. Draper v. United States, 358 U.S. 307, 79 S.Ct. 329, 3 L.Ed.2d 327 (1959). See Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969). But the additional information acquired by the arresting officers must in some sense be corroborative of the informer's tip that the arrestees committed the felony or, as in *Draper* itself, were in the process of committing the felony. See the opinions of the Court and that of Mr. Justice White concurring in Spinelli v. United States, *supra,* and p. 423, 89 S.Ct. p. 592."

Whiteley v. *Warden,* 401 U.S. 560, 567 (1971)

In short, it is support for the accusation, not support for mere collateral details, that imparts credibility to the informant, or reliability to his information.

The Appellate Court's observations concerning Sbrena's "possible improper motive" for accusing Weinger invert the process whereby an informant's credibility is to be judged. *Aguilar* has said that the proponent of the warrant must state facts showing the credibility of the informant or the reliability of his information. (378 U.S. at 114) Thus, the burden is on the proponent to show credibility or reliability, not on the defendant to show lack of credibility or unreliability. Although it recognizes Sbrena's improper motives, the Appellate Court has transferred the

burden to the defendant by commenting that nothing in the supporting papers shows that Sbrena was offered consideration. (App. B, *infra,* p. 8) Aside from the fact that Sbrena, once he shifted blame to Weinger, did not need to be offered consideration for his exculpatory statements, there is no precedent for transferring the burden of showing credibility or reliability in this manner.

The Appellate Court also goes astray by suggesting that Sbrena's false statements to Mr. Demetrius (and the police) were motivated by Sbrena's fear of inculpating himself in a narcotics transaction. (App. B, *infra,* p. 9) Significantly, while the court below has recognized Sbrena's motive and propensity to lie in order to avoid a narcotics charge, it has not followed this same reasoning to its logical conclusion: if, as the Court recognizes, Sbrena would lie to avoid a narcotics charge, can he be considered credible in view of his greater motivation to lie in order to avoid a murder charge? To state the proposition, as the Court below has implicitly done, is to acknowledge its viability. Cf. *People* v. *Cadby,* 62 App.Div.2d 52, 403 N.Y.S.2d 940 (1978).

All told, there was nothing in the record presented to the issuing magistrate by which that officer could conclude that Sbrena was credible or his accusatory information reliable. The trial judge, passing upon that same record, was obviously impressed (as has been the Appellate Court) with the fact that the record presents the opposite—that Sbrena is the kind of informant who would lie to avoid criminal charges against himself. The only difference is that the trial judge properly took this into consideration in assessing Sbrena's credibility. The Appellate Court took this irrefutable evidence of Sbrena's lack of credibility and used it to apologize for Sbrena's inconsistent statements. The significance of this question does not lie in the

Appellate Court's strained examination of the factual contents of the affidavit in this case. A larger question looms as Courts feel free to abuse "Aguilar's reliability-of-the-informer test" by drawing upon the corroboration of relatively meager allegations in order to satisfy the credibility requirement essential to findings of probable cause in warrant applications. *Cf. United States* v. *Harris,* 403 U.S. 573, 591-3 (1971) (dissenting opinion).

Certiorari should be granted in order to reinforce Aguilar's implicit mandate that corroboration means corroboration of the accusatory portions of an informant's story to the police.

II.

The affidavit for the warrant totally failed to show underlying circumstances to believe property was located on the defendant's premises; supposition and inference cannot be substituted for factual allegations.

If it is presumed, as the Appellate Court has done here, that a showing of probable cause to believe a suspect guilty is all that is necessary to justify a search of his residence for fruits, instrumentalities, or evidence of his alleged crime, then "there would be no reason to distinguish search warrants from arrest warrants, and cases like Chimel v. California, 395 U.S. 752 (1969) * * * would make little sense." *United States* v. *Lucarz,* 430 F.2d 1051, 1055 (9 Cir. 1970). The point, observed in silence more often than it is recognized, is that the Fourth Amendment is not directly concerned with a suspect's probable guilt or innocence. It is concerned, in all respects, with the individual's right to privacy. *Katz* v. *United States,* 389 U.S. 347 (1967). So concerned, it focuses primarily on those circumstances which give the sovereign the right to intrude upon the individual's privacy. Thus it is that probable cause to believe

that the individual has committed an offense does not alone give the sovereign the unbridled authority to invade the individual's privacy. *Ker* v. *California,* 374 U.S. 23, 32-3 (1963); *Elkins* v. *United States,* 364 U.S. 206, 221-2 (1960); *Go-Bart Importing Co.* v. *United States,* 282 U.S. 344, 357 1931); *United States* v. *Bailey,* 458 F.2d 408 (9 Cir. 1972); *United States* v. *Flanagan,* 423 F.2d 745 (5 Cir. 1970).

Our constitutional history abounds with examples of this civilized principle. The recognized distinction between arrest and search warrants is one, for, if individual culpability were all that were necessary to invade completely the right of privacy, there would be no need for the search warrant. But see, *Chimel* v. *California,* 395 U.S. 752 (1969); *Ker* v. *California,* 374 U.S. 23, 32-3 (1963). Again, if a showing of individual culpability were enough, the sovereign would have an unbridled right to intrude upon the individual's conversations. But see, *Berger* v. *New York,* 388 U.S. 41, 57 (1967); *Katz* v. *United States,* 389 U.S. 354-5 (1967). Finally, if probable cause of individual guilt were all that were necessary to justify invasion, this Court would not have needed to insist in *Aguilar* that the magistrate "must be informed of some of the underlying circumstances from which the [affiant] * * * concluded that * * * [the items to be seized] were where he claimed they were * * *" (*Aguilar* v. *Texas,* 378 U.S. 108, 114-5 (1964).

The significance of this showing, apart from other allegations showing probable cause to believe the individual has committed a crime, is not only stressed by *Aguilar* itself (378 U.S. at 114-5), but it is underscored by the Court's recent decision in *Zurcher* v. *The Stanford Daily,* ..... U.S. ....., 56 L.Ed.2d 525 (1978). In *Zurcher* the Court commenced its discussion with the categorical obser-

vation that the Fourth "Amendment has not been a barrier to warrants to search property on which there is probable cause to believe that fruits, instrumentalities, or evidence of crime is located, whether or not the owner or possessor of the premises to be searched is himself reasonably suspected of complicity in the crime being investigated." (56 L.Ed.2d at 531) Later the Court in a passage that unequivocally points up the flaw in the Appellate Court's reasoning here, observed that "Search warrants are not directed at persons; they authorize the search of 'places' and the seizure of 'things,' and as a constitutional matter they need not even name the person from whom the things will be seized." (56 L.Ed.2d at 535)

If a "place" is to be searched consistent with the principles of the Fourth Amendment, then the papers supporting the request for a search warrant must show *facts* justifying the intrusions into the place. That is what *Aguilar* held and that is what this Court has held for years.

Unfortunately, Aguilar's caution has not been followed in recent Illinois appellate decisions. In *People* v. *Ruopp,* 61 Ill.App.3d 140, 377 N.E. 2d 1317 (1978), one of two decisions cited by the Appellate Court in this case to support the concept of presuming the presence of described property on certain premises, the Second District, relying on *People* v. *Hammers,* 35 Ill.App.3d 498, 341 N.E.2d 471 (1976), ruled that an issuing magistrate could "conclude" that a suspect kept certain property used in an armed robbery at his home, even though no facts were set forth in the affidavit tending to support this conclusion. *Hammers,* the other decision relied upon by the Appellate Court here, held that an issuing magistrate could "infer" that a weapon "might be" kept at the defendant's home, even though, again, no facts supporting the inference were set forth.

Assumedly, the Appellate Courts in *Hammers*, *Ruopp* and this case have fashioned a doctrine that permits a magistrate to infer, presume, conclude or assume that certain property, either because of its size or nature, "*might be*" kept in a suspect's home. That is not the point of the Constitutional provisions, however. Warrants to search places issue upon a showing of facts sufficient to create probable cause to believe that certain property is kept at those places. *Aguilar* v. *Texas,* 378 U.S. 108, 114-5; *Zurcher* v. *The Stanford Daily,* 56 L.Ed.2d 525, 535-7. They do not issue on inferences, presumptions, conclusions or assumptions. Without meaning to be facetious, if they did, it would be safe (and logical) to presume that a suspect "might" keep anything smaller than an elephant or a tank at his residence.

This hyperbole points up the dangerous precedent in the Appellate Court's reasoning in this case. If "logical presumption" as to the location of certain items of property can supplant facts and underlying circumstances, then *Aguilar's* mandate is pointless and the Constitutional provisions are meaningless. Once a suspect is identified by facts showing probable cause to believe he has committed a certain crime, then it is "logical" to presume that he has kept the fruits, instrumentalities or evidence of that crime in any premises under his control. But, as this Court has so recently reminded us, "Search warrants are not directed at persons; they authorize the search of 'places' * * *" *Zurcher* v. *The Stanford Daily,* supra, 56 L.Ed.2d at 535.

The opinions of the Illinois courts represent an unexplained departure from established principles and reflect an unsound and undesirable policy which authorizes the issuance of a warrant to search a defendant's premises in the "hope" that fruits or evidence of the crime will be found therein.

CONCLUSION

Both facets of the Appellate Court's decision in this case represent substantial and dangerous departures from guidelines that have been carefully drawn to protect vital constitutional rights by this Court. Left unreviewed, the decision of the Illinois Court undercuts these guidelines to the extent that they may well be considered meaningless in Illinois. See, *Stone* v. *Powell,* 428 U.S. 465 (1976) For these reasons we respectfully urge that this Court issue its Writ of Certiorari to the Appellate Court of Illinois for the First Judicial District.

Respectfully submitted,

SHERMAN C. MAGIDSON

Attorney for Petitioner.

CARL P. CLAVELLI,
ON THE BRIEF

APPENDIX

APPENDIX A

COMPLAINT FOR SEARCH WARRANT

John Philbin complainant now appears before the undersigned judge of the Circuit Court of Cook County and requests the issuance of a search warrant to search . . . the premises at 6033 N. Sheridan Rd, apartment #20D, Chicago, Illinois and seize the following instruments, articles and things: an antartic parka coat, blue in color with light colored fur trim; brown leather gloves (mens): shell necklace choker with light colored turquoise shells; men's pants, men's shoes of hiking style; chef's carving knife approx. 11" long; a quantity of cocaine approx. 7.4 grams; keys to Marigrey Jobes apartment #121 at 2970 N. Sheridan Rd., Chicago, Illinois; keys to Mark Demetrius's car, a 1974 Continental Mark 4, blue body with blue vynl top, and brown leather woman's purse with strap, which have been used in the commission of, or which constitute evidence of the offense of Murder.

Complainant says that he has probable cause to believe, based upon the following facts, that the above listed things to be seized are now located upon the . . . premises set forth above:

I, John Philbin, a Chicago Police Department investigator assigned to Area 6 Homicide have been an investigator for 4 years. As part of my duties as an investigator for the Chicago Police Department I was assigned to investigate a double homicide occurring at 2970 N. Sheridan Rd. in apartment #121, sometime between the hours of 11:00 PM on Mar. 1, 1976 and 2:00 AM on March 2, 1976. This affidavit is being made by me based upon my person-

al investigation, interviews with witnesses, conversations with other Chicago Police Officers and the reading of official Chicago Police reports.

In summary, Mark Demetrius and Marigray Jobes were found stabbed to death in Jobes's apartment at 2970 N. Sheridan Rd. #121 on March 3rd, 1976 at approx. 10:00 A.M. The particulars of the instant crime scene and investigation are herein supplyed by attaching and incorporating as a part of this complaint the attached police reports, RD#X079126.

Thru investigation it was discovered that Cedric Sbrena, M/W 25 years, of 430 W. Diversey, Chicago, Illinois, had witnessed the murder of Jobes and Demetrius at the above address. Sbrena told me in substance, but not verbatim, that he went to the above apt. on March 1 on 1976 in the late evening. Present in the apartment were the two victims. A short time later, Mitchell Weinger M/W/24 of 6033 N. Sheridan Rd., apartment 20D, Chicago, Illinois arrived at said apartment in order to purchase some cocaine.

Sbrena did not know Weinger's name at that time. However thru investigation we were able to arrest Weinger. Today, March 6, 1976 at 0135, Sbrena positively identified Weinger in a line up as the individual who came to the above apartment and stabbed Demetrius to death.

When Weinger arrived he engaged Demetrius in a conversation about the purchase of cocaine. Subsequently Weinger and Demetrius entered the bathroom. Sbrena then heard moans coming from the bathroom. Investigating he saw Demetrius lying on the bathroom floor covered with blood. Weinger merged from the bathroom holding a chefs carving knife approx. 11″ long.

Sbrena held off Weinger's attack by displaying a pistol. Jobes was present at this time in the living room. Sbrena then fled the apartment leaving Jobes at the scene with Weinger.

Sbrena said that Weinger was wearing a antartic parka coat, blue in color with light colored fur trim. Weinger also wore brown leather gloves. Weinger wore a shell necklace choker with light colored and turquoise shells. Weinger was also wearing pants and shoes of a hiking style. Sbrena said that there was a quantity of approx. 10 grams of cocaine in the apartment packaged in plastic bags when Weinger entered. Approx. 2.6 grams of cocaine were removed from the body of Jobes. A search of the apartment did not disclose any cocaine. Therefore this affiant verily believes that Weinger is in possession of the remaining cocaine.

Sbrena stated that after leaving Jobes alive at the premises he later returned and saw Jobes lying on the floor covered with blood.

My investigation further disclosed that Demetrius was known to have keys to the apartment at 2970 N. Sheridan Rd. #121, Jobes being his girlfriend. Demetrius was also known to have the key to the drivers door of his vehicle, a 1974 Continental Mark 4, blue body with blue vynl top. A search of the premises did not disclose either of these keys. Affiant verily believes that these keys were taken by Weinger on the day of the murder.

Conversations with other individuals, including Sbrena and Charles Jobes, the victims brother, disclosed that Jobes had a brown leather purse with a strap in her apartment on the day of the murder. A search of the apartment did not disclose this article. Affiant verily believes that Weinger took the purse on the day of the murder.

Further investigation also disclosed that only exit apt. door was secured by a deadbolt lock which could only be closed by key when the first officers arrived on the scene.

Examination of the crime scene revealed a bloody scene with blood splattered on walls, floor, rug, closet floors, bathroom door, bathroom floor and bathroom fixtures.

Affiant verily believes that the cloths worn by Weinger, to wit; an antartic parka coat, blue in color with light colored fur trim, mens brown leather gloves, shell necklace choker with light colored and turquois shells, mens pants and shoes of hiking style, contained traces of the victims blood.

Mitchell Weinger at the time of his arrest, March 6, 1976 at 0045 Hrs. gave his address as 6033 N. Sheridan Rd. apartment #20D Chicago, Illinois. It should also be noted that Weinger was arrested on the way into his apartment at 6033 N. Sheridan Rd.

In conclusion, the affiants states that he believes the above described cloths, the chefs carving knife, approx. 11″ long, the missing quantity of cocaine, (approx. 7.4 grams), as described above, the missing brown leather purse with strap, the missing keys to Demetrius's Mark 4 Continental and the keys to the Jobes apartment are present in the defendants Weinger's apartment #20D at 6033 N. Sheridan Rd. Chicago, Illinois.

/s/ John W. Philbin
Complainant

Subscribed and sworn to before me on November 6, 1976

/s/ John J. Hogan
Judge

APPENDIX B

Mr. Justice Perlin *delivered the opinion of the court:*

The State appeals from an order of the circuit court of Cook County quashing a search warrant and suppressing evidence seized pursuant thereto. (Ill. Rev. Stat. 1977, ch. 110A, par. 604(a)(1).) The State contends that the affidavit for the search warrant was sufficient to establish probable cause for its issuance. Defendant, Mitchell Weinger, who was charged with two murders, contests that probable cause was established and further maintains that the affidavit failed to show an adequate basis for the belief that the items sought by police were at his apartment.

The record shows that the bodies of Mark Demetrius and Marigray Jobes were discovered by the former's father and the building superintendent of the latter's apartment. Both had been stabbed to death. The request for a search warrant for defendant's apartment was made by Chicago Police Officer John Philbin, who was assigned to investigate the case. He averred that the murders occurred between 11 p.m. on March 1, 1976, and 2 a.m. the following day. Attached to the affidavit and incorporated therein was a multi-page police report concerning the crimes.

The affidavit detailed a police investigation which led to Cedric Sbrena who informed police he was in the Jobes apartment shortly before the killings. Defendant then arrived to purchase cocaine, and he and Demetrius entered the bathroom. Sbrena told police he heard moans emanating from the bathroom as defendant emerged carrying a one-foot long carving knife. He looked and saw Demetrius lying on the bathroom floor covered with blood.

Allegedly, defendant came at Sbrena, but the latter pulled a gun to thwart the attack and then fled leaving Jobes and defendant in the apartment. Sbrena later returned to find Jobes had been killed.

Sbrena informed Officer Philbin that about 10 grams of cocaine were in the apartment at the time although only 2.6 grams were recovered by police from Jobes' body. Sbrena also described the clothing worn by defendant that night. Other information disclosed the description of a purse owned by Jobes which was missing, and the fact the apartment keys and Demetrius' car keys were missing. Since the apartment was covered with blood, in seeking the warrant for defendant's residence Officer Philbin asserted that defendant's clothes might contain traces; he also sought the knife, keys, handbag and cocaine.

As pertinent to this appeal the police report incorporated into the complaint for the search warrant indicated each victim died of multiple stab wounds. The report detailed the blood-spattered premises and location of the bodies and was apparently compiled before the police located Sbrena.

The report also summarized the information supplied by Demetrius' father. He told police that his son asked him on March 1, 1976, to telephone the Jobes apartment about 7 a.m. on March 2. When his father complied, he received no answer, and his repeated phone calls throughout March 2 were unanswered. Demetrius was then advised by his wife that their son's pistol was missing.

On March 3, Demetrius' father talked to Sbrena, who said that he also unsuccessfully tried to call Demetrius two days before. Demetrius' father went to the Jobes apartment where he was admitted by the building manager after disengaging two door locks; the victims' bodies

were then discovered. During the evening of March 3 Sbrena called Demetrius' father to obtain details of the incident after supposedly learning of the occurrence from police.

The report further indicated that the police interviewed the brother of Marigray Jobes who advised them that he saw Demetrius obtain a small amount of cocaine on the evening of March 1, 1976. They returned to the Jobes apartment where Demetrius began to weigh the cocaine. At this time Demetrius remarked that Sbrena would be angry because there was only a small amount of cocaine left and about $600 worth of the substance was used. Demetrius said that he and Sbrena were partners in the sale of cocaine, and the latter would arrive shortly to pick it up. Jobes' brother then left about 10 p.m.

The search warrant for defendant's apartment was issued on March 6, 1976.

It is clear that the trial court in granting defendant's motion to quash the search warrant relied on *Aguilar* v. *Texas* (1964), 378 U.S. 108, 12 L.Ed. 2d 723, 84 S. Ct. 1509, in holding the affidavit for the warrant was insufficient because it did not establish any basis to show that Sbrena was reliable. Moreover, the court found no basis in the affidavit to conclude that the police had reason to believe the items sought were in defendant's apartment.

Noting that the affidavit for the search warrant relied principally on hearsay information supplied by Sbrena, the State urges that various bases existed to credit Sbrena's statements. Defendant maintains that the trial court was correct in rejecting the credibility of Sbrena, whom defendant characterizes as a cocaine dealer who twice failed to tell Demetrius' father of his knowledge of the incident

and asked the latter for details. Defendant suggests that Sbrena had ample motive to commit the offenses himself.

It is clear, though, that several factors were corroborated by police investigation from other sources which provided a substantial basis to credit Sbrena's claims concerning the events transpiring in the Jobes apartment. (See *People* v. *Clay* (1973), 53 Ill. 2d 501, 304 N.E.2d 280; *People* v. *Lindner* (2nd Dist. 1975), 24 Ill. App. 3d 995, 322 N.E.2d 229). There is nothing to show that Demetrius' father knew of the presence of cocaine, although Sbrena informed the police of the matter and provided a detailed amount he thought was in the apartment before the slaying. A substantially smaller amount was found suggesting the remainder was taken by the slayer. Moreover, a description of Jobes' purse given by Sbrena was corroborated by her brother. The latter also told police that Sbrena was to arrive at the apartment shortly before the killings took place which would have placed Sbrena at the scene at or near the time the murders occurred. Also, unlike *Aguilar* the informant in this case was identified. *People* v. *Morrison* (4th Dist. 1973), 13 Ill. App.3d 652, 300 N.E.2d 325.

The State also maintains that Sbrena's credibility need not be judged by the more stringent standards applied to an undisclosed, paid police informant. (*People* v. *Hester* (1968), 39 Ill. 2d 489, 237 N.E.2d 466, *cert. denied*, 397 U.S. 660). *Hester* emphasized the lack of gain by those furnishing the information (*People* v. *Isenberg* (1st Dist. 1977), 52 Ill. App.3d 426, 367 N.E.2d 364). In the present case a possible improper motive for Sbrena's version of the incident might arise. Yet there is nothing in the information furnished to the judge, who issued the warrant, to indicate that Sbrena was offered consideration for information he

supplied to police. Also, there can be no claim that any information furnished by Officer Philbin was deliberately false or given in reckless disregard for the truth. *Franks* v. *Delaware* (1978), ... U.S. ....., 46 U.S.L.W. 4869.

Even assuming that Sbrena was involved in narcotics transactions with Demetrius, as defendant claims, it is not unreasonable to view Sbrena's initial actions with Demetrius' father as an attempt to avoid a possible narcotics prosecution by feigning ignorance of the situation. But there is nothing in the matters presented to the judge, who issued the search warrant, which showed that Sbrena continued to assert such ignorance when confronted by police.

In *Spinelli* v. *United States* (1969), 393 U.S. 410, 21 L.Ed. 2d 637, 89 S.Ct. 584, the court considered the situation involving information supplied by other than the affiant. While the court adhered to its holding in *Aguilar* that the reliability of the informant must be established and some basis shown that his information was accurate, it reiterated that its decision did not curtail established precedent: "that only the probability, and not a *prima facie* showing, of criminal activity is the standard of probable cause, (citation); that affidavits of probable cause are tested by much less rigorous standards than those governing the admissibility of evidence at trial, (citation); that in judging probable cause issuing magistrates are not to be confined by niggardly limitations or by restrictions on the use of their common sense, (citations); and that their determination of probable cause should be paid great deference by reviewing courts, (citations)." (393 U.S. at 419.) In the present case the assertions contained in the affidavit for the search warrant provided a reasonable basis linking defendant to the offenses and probable cause was established for issuance of the warrant.

We further reject defendant's claim that the complaint for the warrant did not sustain a reasonable possibility that the evidence sought was in defendant's apartment. In *People* v. *Hammers* (4th Dist. 1976), 35 Ill. App. 3d 498, 341 N.E.2d 471, the court sustained a search of the defendant's home for the gun used in the shooting several days after the occurrence because it was reasonable to infer the weapon was at defendant's house. Similarly, in *People* v. *Ruopp* (2nd Dist. 1978), ... Ill. App. 3d ....., ... N.E. 2d ....., defendant claimed that no basis was demonstrated to indicate the weapon and clothes used in several armed robberies were in his apartment. The court rejected his assertion stating it was reasonable to believe these items were there.

In the present case the police sought several items of clothing and jewelry purportedly worn by defendant when the murders were committed which could have contained traces of the victims' blood. It is a logical supposition that defendant would have these articles in his apartment. Also, as in *Hammers* and *Ruopp*, it would be a proper inference that the possible weapon would be there. The police sought the purse, car keys and cocaine missing from the Jobes apartment. If these items were removed by the defendant, then his residence would seemingly be a place to hide them.

Accordingly, the order of the circuit court quashing the search warrant and suppressing evidence seized pursuant thereto is reversed and the cause remanded for further proceedings.

ORDER REVERSED AND CAUSE REMANDED.

DOWNING AND BROWN, JJ., concur.